

### **10118.5 Periodic Review of Status of Deferred Cases**

In order to determine whether deferral remains appropriate, the Regional Office should, on a quarterly basis, ascertain from the parties the status of the proceedings to which the Regional Office has deferred. Once a response is received, the Regional Office should determine whether all parties are meeting their obligations imposed as conditions for deferral by the Region and what action, if any, should be taken. Upon resolution of the related proceedings, the Regional Office must promptly review the disposition of the related proceedings and take whatever action is appropriate.

### **10118.6 Pattern for *Collyer* Deferral Letter**

The following pattern should be used for deferral under *Collyer* and addressed to both parties as follows:

- If an attorney represents a party, the letter should be addressed to the attorney with a copy to the party.
- If the party is not represented by an attorney, the letter should be addressed to that party with a copy to its representative.

### **Collyer Deferral Letter**

[Charging Party's and Charged Party's Attorneys—  
otherwise, list the party if not represented by an attorney.]

**Re:** [Case Name]  
[Case Number]

### **Appropriate Salutation:**

**The Region has carefully considered the charge filed against [Charged Party name] alleging it violated the National Labor Relations Act. As explained below, I have decided that further proceedings on that charge should be handled in accordance with the Board's deferral policy.**

***Deferral Policy:* The Board's deferral policy provides that this Agency withhold making a final determination on certain unfair labor practice charges when a grievance involving the same issue can be processed under the grievance/arbitration provisions of the applicable contract. *Collyer Insulated Wire*, 192 NLRB 837 (1971), and *United***

***Technologies Corp.*, 268 NLRB 557 (1984).** This policy is based, in part, on the preference that the parties should resolve certain issues through their contractual grievance procedure in order to achieve a prompt, fair and effective settlement of their dispute. Therefore, if an employer agrees to waive contractual time limits and process the related grievance through arbitration if necessary, the Regional Office will defer the charge. However, this policy requires that a charge be dismissed if the charging party thereafter fails to promptly file and attempt to process a grievance on the subject matter of the charge.

***Decision to Defer:*** Based on our investigation, I am deferring further proceedings on [(the charge) or (that portion of the charge described below)] to the grievance/arbitration process for the following reasons:

- 1. The charge alleges:** [Describe allegations being deferred.]
- 2. The Employer and the Union have a collective-bargaining agreement currently in effect that provides for final and binding arbitration.**
- 3. The Employer is willing to process a grievance concerning the above allegations in the charge and will arbitrate the grievance if necessary. The Employer has also agreed to waive any time limitations in order to ensure that the arbitrator addresses the merits of the dispute.**
- 4. Since the above allegations in the charge appear to be covered by certain provisions of the collective-bargaining agreement, it is likely that such allegations may be resolved through the grievance/arbitration procedure.**

***Further Processing of the Charge:*** As explained below, while the charge is deferred, the Region will monitor the processing of the grievance and, under certain circumstances, will resume processing the charge.

***Charging Party's Obligation:*** Under the Board's *Collyer* deferral policy, the Charging Party has an affirmative obligation to file a grievance, if a grievance has not already been filed. If the Charging

**Party fails either to promptly file or submit the grievance to the grievance/arbitration process, or declines to have the grievance arbitrated if it is not resolved, I will dismiss the charge.**

[Note: If charge is filed by an individual, add the following paragraph.]

***Union/Employer Conduct:*** If the Union or Employer fails to promptly process the grievance under the grievance/arbitration process; declines to arbitrate the grievance if it is not resolved; or if a conflict develops between the interests of the Union and Charging Party, I may revoke deferral and resume processing of the charge.

***Charged Party's Conduct:*** If the Charged Party prevents or impedes resolution of the grievance, raises a defense that the grievance is untimely filed or refuses to arbitrate the grievance, I will revoke deferral and resume processing of the charge.

***Inquiries and Requests for Further Processing:*** Approximately every 90 days, the Regional Office will ask the parties about the status of this dispute to determine if the dispute has been resolved and whether continued deferral is appropriate. However, I will accept and consider at any time requests and supporting evidence submitted by any party to this matter for dismissal of the charge, for continued deferral of the charge or for issuance of a complaint.

***Notice to Arbitrator Form:*** If the grievance is submitted to an arbitrator, please sign and submit to the arbitrator the enclosed "Notice to Arbitrator" form to ensure that the Region receives a copy of an arbitration award when the award is sent to the parties.

***Review of Arbitrator's Award:*** If the grievance is arbitrated, the Charging Party may request that this office review the arbitrator's award. The request must be in writing and addressed to me. The request should discuss whether the arbitration process was fair and regular, whether the unfair labor practice allegations in the charge were considered by the arbitrator, and whether the award is clearly repugnant to the Act. Further guidance on the nature of this review is provided in *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955), and *Olin Corp.*, 268 NLRB 573 (1984).

***Charging Party's Right to Appeal:*** The National Labor Relations Board Rules and Regulations permit the Charging Party to obtain a review of this action by filing an appeal with the GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-4767) will satisfy this requirement. However, the Charging Party is encouraged to submit a complete statement setting forth the facts and reasons why the Charging Party believes that the decision to defer the charge was incorrect.

The appeal may be filed by regular mail addressed to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. A copy of the appeal should also be mailed to me.

An appeal may also be filed electronically by using the E-filing system on the Agency's Website. In order to file an appeal electronically, please go to the Agency's Website at [www.nlrb.gov](http://www.nlrb.gov) and select the E-Gov tab and click on E-Filing. Scroll to the *General Counsel's Office of Appeals*. Select the type of document you wish to file electronically and you will navigate to detailed instructions on how to file an appeal electronically.

The appeal MAY NOT be filed by facsimile transmission.

***Appeal Due Date:*** The appeal must be received by the General Counsel in Washington D. C. by the close of business at 5:00 p.m. (ET) on [14 days from issuance]. If the appeal is mailed, it will be considered timely filed if it is postmarked no later than one day before the due date set forth above. If the appeal is filed electronically, it also must be received by the General Counsel by the close of business at 5:00 p.m. (ET) on the due date set forth above. A failure to timely file an appeal electronically will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or unavailable, the sending machine malfunctioned, or for any other electronic-related reason.

***Extension of Time to File Appeal:*** Upon good cause shown, the General Counsel may grant an extension of time to file the appeal. Charging Party may file a request for an extension of time to file by mail, facsimile transmission, or through the Internet. The fax number

is (202) 273-4283. Special instructions for requesting an extension of time over the Internet are set forth in the attached Access Code Certificate. While an appeal will be accepted as timely filed if it is postmarked no later than one day prior to the appeal due date, this rule does not apply to requests for extension of time. A request for an extension of time to file an appeal must be received on or before the original appeal due date. A request that is postmarked prior to the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed through the Internet, a copy of any request for extension of time should be sent to me.

*Confidentiality/Privilege:* Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Further, we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes. Accordingly, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential sources, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(D), 5 U.S.C. § 552(b)(4), (6), (7)(C), and 7(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

*Notice to Other Parties of Appeal:* The Charging Party should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is mailed to the General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,

**Regional Director**

**Enclosures**

**cc: Charging Party (unless addressed above because not represented  
by an attorney)  
Non Attorney Representative of any Party  
Charged Party (unless addressed above because not represented  
by an attorney)  
Union and Representative (unless Union is the Charging Party)  
General Counsel, Office of Appeals**

#### **10122.14 Patterns Related to Dismissals**

The following patterns related to dismissals of unfair labor practice charges should be served as follows:

- If the charging party is represented by an attorney, the letter should be addressed to the attorney with a copy to the charging party.
- If the charging party is not represented by an attorney, the letter should be addressed to the charging party with a copy to its representative.
- Copies of the letter should also be sent to the charged party and its representative.

(a) *Pattern for Dismissal of Charges:* The following pattern should be used for dismissal of an unfair labor practice charge. The normal appeal period is 14 days; see, however, Sec. 10122.4 for circumstances relating to Section 8(b)(7) in which the appeal period is reduced to 7 days.

[Charging Party's Attorney—otherwise,  
Charging Party if not represented by an attorney.]

**Re:** [Case Name]  
[Case Number]

#### **Appropriate Salutation:**

**The Region has carefully investigated and considered your charge against \_\_\_\_\_ alleging violations under Section 8 of the National Labor Relations Act.**

***Decision to Dismiss:* Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your charge for the following reasons:**

**Your charge alleges [, among other things,] that** [Briefly describe closely related allegations and reasons for dismissal in the same paragraph.]

**Your charge also alleges that. . . .**

**Finally, your charge also alleges that. . . .**

***Your Right to Appeal:*** The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-4767) will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision to dismiss your charge was incorrect.

The appeal may be filed by regular mail addressed to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. A copy of the appeal should also be mailed to me.

An appeal may also be filed electronically by using the E-filing system on the Agency's Website. In order to file an appeal electronically, please go to the Agency's Website at [www.nlrb.gov](http://www.nlrb.gov) and select the E-Gov tab and click on E-Filing. Scroll to the *General Counsel's Office of Appeals*. Select the type of document you wish to file electronically and you will navigate to detailed instructions on how to file an appeal electronically.

The appeal **MAY NOT** be filed by facsimile transmission.

**Appeal Due Date:** The appeal must be received by the General Counsel in Washington D. C. by the close of business at 5:00 p.m. (ET) on [14 days from issuance]. If you mail the appeal, it will be considered timely filed if it is postmarked no later than one day before the due date set forth above. If you file the appeal electronically, it also must be received by the General Counsel by the close of business at 5:00 p.m. (ET) on the due date set forth above. A failure to timely file an appeal electronically will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or unavailable, the sending machine malfunctioned, or for any other electronic-related reason.

***Extension of Time to File Appeal:*** Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. You may file a request for an extension of time to file by mail, facsimile transmission, or through the Internet. The fax number is (202) 273-4283. Special instructions for requesting an extension of time over the



Internet are set forth in the attached Access Code Certificate. While an appeal will be accepted as timely filed if it is postmarked no later than one day prior to the appeal due date, this rule does not apply to requests for extension of time. A request for an extension of time to file an appeal must be received on or before the original appeal due date. A request that is postmarked prior to the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed through the Internet, a copy of any request for extension of time should be sent to me.

***Confidentiality/Privilege:*** Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Further, we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes. Accordingly, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential sources, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(D), 5 U.S.C. § 552(b)(4), (6), (7)(C), and 7(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

***Notice to Other Parties of Appeal:*** You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is mailed to the General Counsel, please complete the

enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,

Regional Director

**cc: Charging Party (unless addressed above because not represented by an attorney)**  
**Non Attorney Representative of Charging Party**  
**Charged Party and Representative**  
**Other Parties and Representatives**  
**General Counsel, Office of Appeals**

*(b) Pattern for Revocation of Dismissal While Appeal is Pending:*

[Charging Party's Attorney—otherwise  
Charging Party if not represented by an attorney]  
**Re:** [Case Name]  
[Case Number]

**Appropriate Salutation:**

**By letter dated [date], I dismissed the charge [you/charging party] filed against [name of charged party]. On [date] [you/charging party] appealed the dismissal of your charge to the General Counsel.**

**Revocation of Dismissal: After further review, I have reconsidered my conclusion and have now determined that additional proceedings on [your/the] charge are warranted. In view of my reconsideration, on behalf of the General Counsel, I am informing you that [your/the] charge is being returned to the Regional Office for further processing. Since I have determined that further proceedings are**

**warranted on [your/the] charge, I am revoking my earlier dismissal of [your/the] charge.**

[An opportunity to settle in absence of complaint can be set forth here.]

**Very truly yours,**

**Regional Director**

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not represented by an attorney)  
Non Attorney Representative of Charging Party  
Charged Party and Representative  
Other Parties and Representatives  
General Counsel, Office of Appeals**

*(c) Pattern for Approval of Request to Withdraw Appeal and Charge:*

[Charging Party's Attorney—otherwise,  
Charging Party if not represented by an attorney.]

**Re:** [Case Name]  
[Case Number]

**Appropriate Salutation:**

**By letter dated [date], I dismissed the charge [you/charging party] filed against [name]. On [date] you appealed the dismissal of your charge to the General Counsel. On [date] you requested to withdraw the charge in this matter.**

**Because of the pending appeal, [your/that] request to withdraw the charge is considered to be a request to withdraw both [your/the] appeal and the charge in this matter. Accordingly, on behalf of the General**

**Counsel, I approve [your/the] request to withdraw the appeal. I also approve [your/the] request to withdraw the charge in this matter.**

**Very truly yours,**

**Regional Director**

**cc: Charging Party (unless addressed above because  
not represented by an attorney)  
Non Attorney Representative of Charging Party  
Charged Party and Representative  
Other Parties and Representatives  
General Counsel, Office of Appeals**

*(d) Pattern for Merit Dismissal – Conditional Decision to Dismiss:*

[Charging Party's Attorney—otherwise  
Charging Party if not represented by an attorney.]

**Re:** [Case Name]  
[Case Number]

**Appropriate Salutation:**

**The Region has carefully investigated and considered your charge against \_\_\_\_\_ alleging violations under Section 8 of the National Labor Relations Act.**

***Conditional Decision to Dismiss:* I have concluded that further proceedings on the arguably meritorious allegations disclosed by the investigation are not warranted at this time. For the reasons set forth below, I have conditionally decided to dismiss your charge 6 months from this date.**

**Your charge alleges [Describe the arguably violative conduct.]**

**I have conditionally decided to dismiss because there were no prior meritorious unfair labor practice charges against the Charged Party within the past several years, and [Set forth additional circumstances which make the conditional decision to dismiss appropriate, such as:**

- the conduct is isolated in nature; or
- there is no ongoing unlawful effect on an employee's terms and conditions of employment; or
- there is neither impact on other employees nor other accompanying violations which require a Board remedy; or
- the conduct has minor group impact; or
- the conduct is of limited duration.]

**I intend to dismiss your charge 6 months from this date unless a new meritorious charge is filed within that time alleging that the Charged Party has engaged in other unfair labor practices that make dismissal of your charge inappropriate. Accordingly, I will hold your charge in abeyance for 6 months from the date of this letter. If a meritorious charge involving other unfair labor practices is filed against the Charged Party during that period, I will reconsider whether further proceedings on this charge are warranted.**

***Your Right to Appeal:*** The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-4767) will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision to dismiss your charge was incorrect.

**The appeal may be filed by regular mail addressed to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. A copy of the appeal should also be mailed to me.**

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hearing that may be held before an administrative law judge. Further, we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes. Accordingly, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential sources, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(D), 5 U.S.C. § 552(b)(4), (6), (7)(C), and 7(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

*Notice to Other Parties of Appeal:* You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is mailed to the General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,

Regional Director

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Non Attorney Representative of Charging Party  
Charged Party and Representative  
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General Counsel, Office of Appeals

(e) *Pattern for Merit Dismissal Following Conditional Decision to Dismiss:*

[Charging Party's Attorney—otherwise,  
Charging Party if not represented by an attorney.]

**Re:** [Case Name]  
[Case Number]

**Appropriate Salutation:**

The Region has carefully investigated and considered your charge against \_\_\_\_\_ alleging violations under Section 8 of the National Labor Relations Act.

***Decision to Dismiss:*** On [date], I informed you of my intention to dismiss this charge in 6 months unless a new meritorious charge was filed within that time alleging that the Charged Party has engaged in other unfair labor practices that make dismissal of your charge inappropriate. No such charge has been filed. Accordingly, I have concluded that further proceedings are not warranted and I am dismissing your charge.

***Your Right to Appeal:*** The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-4767) will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision to dismiss your charge was incorrect.

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Regional Director

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